

PETITION FOR ACCEPTANCE OF AMENDMENT SUBSEQUENT TO
PAYMENT OF ISSUE FEE

The present Amendment is submitted to add to the present reissue application certain claims which appeared in the original patent. These claims are required to maintain continuity of scope of coverage to permit applicant to seek enforcement of his patent rights after issuance of the present reissue on infringement claims which arose prior to the issue of the reissue. The claims were deleted from the original Reissue application in favor of the broader claims submitted. Subsequently, in connection with enforcement activities concerning an alleged infringement, applicant became aware that the infringement may have ceased, or may cease prior to reissue grant. Accordingly, it is necessary that original claims as submitted herewith be preserved to allow a cause of action to continue after reissue grant.

These claims were originally submitted on June 9, 1997, prior to the payment of the Issue Fee herein on August 5, 1997. They were not reviewed and an Examiner's report thereon was not issued, however, until August 28, 1997. At that time, Applicant was first advised that the Amendment would not be entered, as no supplemental declaration of the inventor accompanied the Amendment. A telephone call was promptly placed to Examiner O'Neill, who acknowledged the ambiguity of the necessity for such a declaration in light of the

fact that original claims, not changing the scope of the original patent were offered, and who indicated that a declaration setting forth the basis for the reoffer should suffice.

The present Amendment adds no new matter and does not broaden the scope of the claimed invention over that set forth in the presently-allowed claims.

The present Amendment, and accompanying Additional Declaration of Nabil Ghaly, the inventor, was promptly prepared. As set forth in the Declaration, the Amendment is necessary to insure that the inventor can seek to enforce his patent against infringements which may end prior to Reissue issuance and adds no new matter nor enlarges the scope of the patent as originally issued. The subject matter of the present Amendment was submitted in a more timely manner, before issue fee payment, but due to the time associated with Patent Office processing, the alleged defects were not made known until after the final fee was paid. Accordingly, the present Petition to accept the Amendment should be granted.

Enclosed herewith is the Petition fee of \$130. Kindly charge any deficiency to Deposit Account 19-0748. In view of the Patent Office's delay in advising Applicant concerning the status of the earlier-submitted Amendment, thus necessitating the present submission, it is requested that the petition fee be waived or returned. The fee of \$307 for the additional claims submitted


. hereby was paid with the submission of the prior Amendment on June 9, 1997. Kindly charge any deficiency to Deposit Account 19-0748.

Respectfully submitted,

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BY


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CERTIFICATE UNDER 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks Washington, D.C. 20231 on September 8, 1997.

Applicant's Attorney:

